



WELCOME

TEXAS ROUNDTABLE ON REPRESENTATION OF DEFENDANTS WITH MENTAL ILLNESS

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Measuring Success

Meg Ledyard, PhD
Travis County Texas



Travis County

- Mental Health Public Defender
- Capital Area Private Defender Service (CAPDS)



Why Measure?

To help tell your story



What can measuring tell us?

- What do you do?
- Are you doing it well?
- Are you using resources effectively?
- How does it impact the client?
- How does it impact the community?
- Costs vs. Benefits

What is your value to the community?

Cost – Benefit Analysis

Costs

- Direct cost of program

Benefits

- Typical
 - Jail Bed Days Saved
- Innovative
 - Case and Life outcomes of the clients



How to Decide What to Measure?

- How easy is it to measure?

Prioritize:

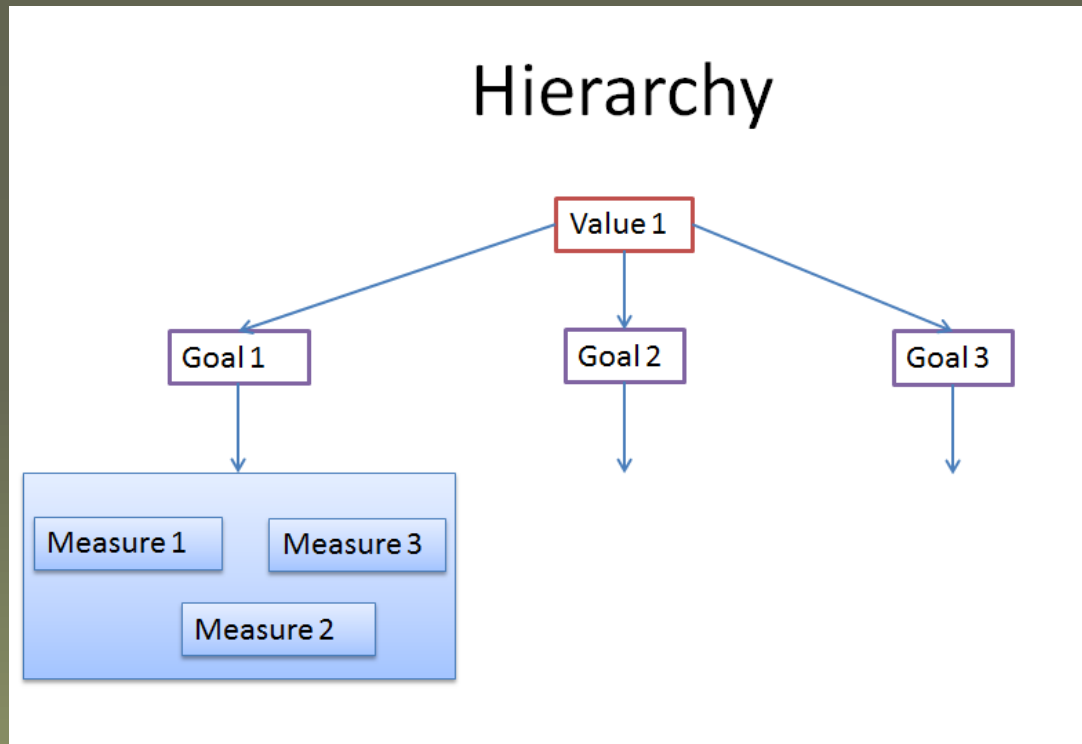
- Things that you have to report
- Not just actions, but outputs/outcomes
- Example:
 - Connected client with housing provider – Action
 - Client received housing from provider - Outcome



Create Measures that Matter

- What does the community value?
 - Cost effectiveness?
 - Quality of Representation?
 - Life outcomes of the client?

Measures should support values and goals





Types of Measures

Process – Legal requirements

Inputs - Services Provided

Outcomes



Things Measuring for CAPDS

- Time to First meeting with social worker
- Number of referrals
 - Medical, Financial Services, MH, Basic Needs, Substance Abuse
- Successful referrals
- Time to referral
- Case outcomes



Remember

- Measuring holistic defense is relatively new
- You may have to go through some trial and error to find meaningful measures
- Measures used should be continually evaluated and improved



Thank You

Legal Issues in Mental Health Representation



Floyd L. Jennings, J.D., Ph.D.
713 274-6701

Overview

- Art. 16.22 screening examinations
- Competency examinations of persons not yet charged
- Unvacated adjudication of incompetency

Art. 16.22 screening examinations

- 16.22 requires the sheriff to advise the magistrate (now within 72 hrs) of having credible information that a defendant might be a person with mental illness, or IDD
- The magistrate shall order the LMHA or other entity to “collect information”

Art. 16.22 p2

- Such collection is not required if a dx has been rendered in the year preceding arrest
- If the def refuses, a 21 days inpatient evaluation may be ordered (on request of the LMHA and with the consent of the facility) – Not a likely option

Art. 16.22 p3

- A written assessment must be delivered within 10 days in a misd. or 30 days in the case of a felony
- The magistrate shall provide copies to the parties and the trial court
- Contents:
 - Whether the def is a person with MH or IDD
 - Whether there is clinical evidence to support a belief the def may be incompetent
 - Treatment recommendations

Art. 16.22 p4

■ Problems:

- Inclusion of culpatory information in the assessment has occurred
- The evaluation is limited merely to establish a diagnosis and treatment recommendations and must be brief
- Inclusion of culpatory information is improper
- Competency issues are premature

Art. 16.22 p5

■ Recommendations:

- Motion in Limine to prohibit use of this screening information at the guilt phase of a trial
- High-level, political, conversation with the LMHA to limit the scope, length, and information included in any such evaluation

Competency evaluations of persons not yet charged

- Problems occur in smaller counties, where the GJ meets infrequently, or where even charges by information are not real-time,
- The S.O. complains of a disturbed defendant – who has counsel but has not been charged
- The court orders a competency examination

Competency evaluations of persons not yet charged, p2

- An examiner opines the def is incompetent
- The court orders commitment to a state facility – in some counties, relying upon not a cause number but the sheriff's ID number associated with the def

Competency evaluations of persons not yet charged, p3

- Issue – It is not possible to ascertain if a person has a rational and factual knowledge of charges that are, in fact, non-existent
- Issue – If opined incompetent, it is not possible to “restore” a person in such a circumstance
- Issue – If “not restored” – then what?

Competency evaluations of persons not yet charged, p4

- Problem: Increased costs to county
- Problem: Increases LOS in confinement
- Recommendations:
 - Ensure charges have been filed before any order is issued
 - Provide examiners with charging information (as per statute

Competency evaluations & 16.22

- References to competency in 16.22 are premature – as the person has not yet been charged
- As well, arrestees may need a period of time to stabilize – if toxic, or psychotic
- Screeners in 16.22 evaluations do not commonly meet criteria for 46B examinations for competency

Unvacated adjudication of incompetency

- A def found incompetent sent for restoration and not restored, or not sent because he is unlikely to be restored in the foreseeable future, represents an “unvacated adjudication of incompetency”
- *Manning v. State*, 730 S.W.2d 744 (Tex. Crim. App. 1987) creates a different presumption and burden shift

Unvacated adjudication of incompetency p2

- Presumption: A *Manning* case is now presumed to be incompetent
- Burden shift: The burden shifts to the State to prove beyond a reasonable doubt that the def is competent
- Examinations: To a different standard – looking for evidence of competency rather than incompetency

Unvacated adjudication of incompetency p3

- Recommendations: Create a special order for competency examinations in *Manning* cases
- Define “forseeable future” – as “the time frame available to the court in this matter” (i.e. 60 days or 120 days - with a possible 60 day extension)

Statutory options for unrestored

- 46B.071(b) persons opined NR and NLR may not be sent for restoration
- 46B.084 provides that:
 - With NLR's not dismissed, the court shall proceed under a 46B.102/103
 - With NLR's dismissed, the court shall do a 46B.151 transfer to a court having MH jurisdiction for civil proceedings

Summary

- 16.22 evaluations should be brief, include no culpatory information and focus solely upon dx and treatment needed
- Competency evaluations of persons not yet charged, **JUST SAY 'NO'**
- Unvacated adjudications of incompetency – do a 102 or 151, no personal bonds